DATE: March 4, 1977
CASE NO.: 95-INA-163

In the Matter of:

ALFA TRAVEL,
Employer

On Behalf Of:

SYED AYUB KAZMI,
Alien

Appearance: Michael Phulwani, Esq.
For the Employer/Alien

Before: Holmes, Huddleston, and Neusner
Administrative Law Judges

RICHARD E. HUDDLESTON
Administrative Law Judge

DECISION AND ORDER

The above action arises upon the Employer's request for review pursuant to 20 C.F.R. § 656.26 (1991) of the United States Department of Labor Certifying Officer's ("CO") denial of a labor certification application. This application was submitted by the Employer on behalf of the above-named Alien pursuant to § 212(a)(14) of the Immigration and Nationality Act of 1990, 8 U.S.C. § 1182(a)(14) (1990) ("Act"). The certification of aliens for permanent employment is governed by § 212(a)(5)(A) of the Act, 8 U.S.C. § 1182(a)(5)(A), and Title 20, Part 656 of the Code of Federal Regulations ("C.F.R."). Unless otherwise noted, all regulations cited in this decision are in Title 20.

Under § 212(a)(14) of the Act, as amended, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is ineligible to receive labor certification unless the Secretary of Labor has determined and certified to the Secretary of State and to the Attorney General that, at the time of the application for visa and admission into the United States and at the place where the alien is to perform the work: (1) there are not sufficient workers in the United States who are able, willing, qualified, and available; and, (2) the employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

An employer who desires to employ an alien on a permanent basis must demonstrate that the requirements of 20 C.F.R. Part 656 have been met. These requirements include the responsibility of the employer to recruit U.S. workers at the prevailing wage and under

prevailing working conditions through the public employment service and by other reasonable means in order to make a good-faith test of U.S. worker availability.

We base our decision on the record upon which the CO denied certification and the Employer's request for review, as contained in an Appeal File,[1] and any written argument of the parties. 20 C.F.R. § 656.27(c).

Statement of the Case

On May 14, 1993, Alfa Travel ("Employer") filed an application for labor certification to enable Syed Ayub Kazmi ("Alien") to fill the position of Travel Agent (AF 43). The job duties for the position are:

> Determine customer destination; quote fares, make airline or surface reservations, arrange hotel accommodations; plan, arrange, and sell Islamic pilgrimage (UMRA) tours to Saudi Arabia, using knowledge of Saudi Arabian VISA and health requirements.

The requirements for the position are two years of experience in the job offered. Other Special Requirements are: must be fluent in spoken Urdu and Punjabi for easy conversation with clients.

The CO issued a Notice of Findings on April 12, 1994 (AF 71), proposing to deny certification on the grounds that the Employer's job requirement of two years of experience is unduly restrictive pursuant to 20 C.F.R. § 656.21(b)(2), as the *Dictionary of Occupational Titles* requires only six months to one year of experience for the position of Travel Agent. The CO also found that the Employer's requirement of spoken fluency in two foreign languages was unduly restrictive and not supported by evidence of business necessity as required by 20 C.F.R. § 656.21(b)(2). The Employer was notified that it could cure these defects by deleting the restrictive requirements and readvertising, or could rebut by showing evidence of the business necessity of the requirements.

In its rebuttal, dated May 20, 1994 (AF 90), the Employer contended that two years of experience was required as a business necessity because of the specialization of Islamic pilgrimage tours, which require special knowledge of Saudi Arabian visa and health requirements, and that six months to one year of experience would be insufficient to gain this knowledge. The Employer also stated that it was willing to withdraw the requirement of the Punjabi language, because the speakers of this language can easily understand the Urdu language. The Employer stated that it has about 300 customers per month, 80% of which are not able or have difficulty communicating in English, that 70% of its business is dependent upon the Urdu language, that the worker would use Urdu 70% of the time, that business would suffer from the presence of non-Urdu speaking employees, and that the President of the Company

[1] All further reference to documents contained in the Appeal File will be noted as "AF *n*," where *n* represents the page number.

speaks Urdu, but not the two other workers (Reservations Clerk and Accountant/Cashier). The Employer also submitted a "list of our clients who were clearly dependent on this language."

The CO issued the Final Determination on June 7, 1994 (AF 93), denying certification because the Employer failed to indicate any substantial reason why two years of experience is necessary for the position of travel agent in the United States. The CO accepted the Employer's rebuttal concerning the language requirements.

On July 11, 1994, the Employer requested review of the denial of labor certification (AF 105). The CO denied reconsideration and forwarded the record to this Board of Alien Labor Certification Appeals ("BALCA" or "Board").

Discussion

Twenty C.F.R. § 656.21(b)(2) specifies that the employer "shall document that the job opportunity has been and is being described without unduly restrictive job requirements" and that the job opportunity's requirements shall be those normally required for the job in the U.S. "*unless* adequately documented as arising from business necessity." 20 C.F.R. § 656.21(b)(2)(i) (emphasis added). In addition, the job requirements shall be those specified in the D.O.T., 20 C.F.R. § 656.21(b)(2)(i)(B), *unless* the employer makes an affirmative demonstration that his business needs require additional skills. We find that the Employer has made no such demonstration of business necessity in the instant case; it has merely asserted such a need, but has neither convinced us, nor the CO, that its requirements are a business necessity.

Although a written assertion constitutes documentation that must be considered for the purposes of rebuttal under *Gencorp,* 87-INA-659 (Jan. 13, 1988) (*en banc*), a bare assertion without supporting reasoning or evidence is generally insufficient to carry an employer's burden of proof. *Id.* Thus, the Employer's assertion that two years of experience in "knowledge of the exotic vegetable is essential to performing, in a reasonable manner, the job duties as described by the employer," must be given some deference (AF 18). Nevertheless, unsupported conclusions are insufficient to demonstrate that job requirements are supported by business necessity. *Inter-World Immigration Service*, 88-INA-490 (Sept. 1, 1989), citing *Tri-P's Corp.,* 88-INA-686 (Feb. 17, 1989).

In order to meet the burden of demonstrating that the two-year requirement is supported by business necessity, the Employer must provide factual support or compelling explanation. *Inter-World, supra*. In rebuttal, the Employer states that the difference between the DOT description and the Employer's job is that the DOT concerns "planning, describing, arranging and selling tours" and the Employer's description concerns "planning, arranging and selling Islamic pilgrimage (UMRA) tours." While the Employer's statements in rebuttal may describe its business, they do not address the relationship between the requirements of two years of experience and the position of Travel Agent, which normally requires six months to one year. The Employer does not offer any documentation why individuals with six months to one year of experience would not be able to perform the required job duties. We agree with the CO that the Employer has failed to adequately document the business necessity of the requirement for two years of experience.

ORDER

The Certifying Officer's denial of labor certification is hereby **AFFIRMED**.

Entered this the _____ day of March, 1997, for the Panel:

_____
RICHARD E. HUDDLESTON
Administrative Law Judge

NOTICE OF PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary of Labor unless, within 20 days from the date of service, a party petitions for review by the full Board of Alien Labor Certification Appeals. Such a review is not favored, and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions for such review must be filed with:

Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, N.W., Suite 400
Washington, D.C. 20001-8002

Copies of the petition must also be served on other parties, and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with the supporting authority, if any, and shall not exceed five double-spaced typewritten pages. Responses, if any, shall be filed within 10 days of service of the petition, and shall not exceed five double-spaced typewritten pages. Upon the granting of a petition, the Board may order briefs.